resolved to have nothing to do with him, nor allow anyone else to; so his laborers fled, he got no food, and no one would speak to him, until the Ulsterites came to his rescue, and civil war followed, which the government had to put down by the soldiers.[27] There is also no doubt that, under the Sherman Act and the decisions of the Supreme Court before the Clayton Act, the defendants' acts were illegal. H. L. W.

DISQUALIFICATION OF JUDGES BY PREJUDICE.—Under the provisions of Section 21 of the Federal Judicial Code, Victor Berger and others, who had been indicted under the Espionage Act in the Northern District of Illinois, filed an affidavit charging Judge Landis with personal bias and prejudice against them as German-Americans, and moved for the assignment of another judge to preside at their trial. The motion was overruled by Judge Landis, and he himself presided at the trial, and the defendants were convicted and sentenced. The Supreme Court of the United States, to which the matter came on certificate, held, three justices dissenting, that Judge Landis could not, under the statute, pass upon the truth of the facts alleged in the affidavit showing prejudice, but that, upon the filing of an affidavit sufficient on its face, he was incapacitated from further proceeding with the case. *Berger* v. *United States,* No. 460, decided January 31, 1921.

This decision seems in harmony with the evident purpose of the statute, and is reassuring to all who feel that the courts cannot too strictly guard themselves from any suspicion of hostility or favoritism toward litigants. The common law was probably too indifferent on this matter. Blackstone says that "in the times of Bracton and Fleta, a judge might be refused for good cause; but now the law is otherwise, and it is held that judges and justices cannot be challanged." 3 COMMENTARIES, 362. But the obviously just rule that a man cannot be judge in his own case, now universally recognized, would seem to extend itself in principle over every suit where a judge, by reason of prejudice and the consequent partisan interest which he develops, has made himself morally a party to the action. The section of the Federal Judicial Code on which the objection to Judge Landis was based undertook to put this principle into operation. Upon the filing of the affidavit Judge Landis undoubtedly became a party to a controversy over his own fitness, and he insisted on deciding the merits of the case in which he was a contestant. The Supreme Court thought him qualified to decide the legal sufficiency of the showing made, but not to pass upon the truth of the accusation.

Under a somewhat similar statute in Montana it has been held that the filing of a proper disqualification affidavit *ipso facto* deprives the judge of further authority to act. *State ex rel.* v. *Clancy,* 30 Mont. 529; *State ex rel.* v. *Donlan,* 32 Mont. 256. Under the California statute a similar result follows in justice court cases, *People* v. *Flagley,* 22 Cal. 34, and in superior court cases where no counter affidavits are filed, *People* v. *Compton,* 123 Cal.

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[27] LAW AS TO BOYCOTT, WYMAN (1903), 15 Green Bag, 208-215.

403. The "salutary rule" of relieving the judge from the "very delicate and trying duty of deciding upon the question of his own disqualification" received the warm approval of the California court in the case last cited.

The *Berger* case effectually disaffirms the doctrine of *Ex parte N. K. Fairbanks Co.*, 194 Fed. 978, where Judge Jones, in the Middle District of Alabama, held, in a long and elaborate opinion, that Congress could not, under the Constitution, "lawfully enact that a judge, who is in truth qualified, is in law disqualified because a suitor makes an affidavit to that effect, and make that *ex parte* statement conclusive proof of the disqualification and cut off all judicial inquiry as to the judge's competency." He contended that the disqualification of a judge to try a particular case must rest upon facts which unfit him, and the existence of such facts must be determined as a judicial question by some judicial tribunal; that if the filing of the requisite affidavit operated to prevent the judge from further acting in the litigation we should have a situation where "the affidavit maker in fact, though not in name, puts on the judicial robes and excludes the presiding judge and all other judicial authority from any voice in determining the matter, and by the mere filing of an affidavit renders judgment of disqualification and executes it," citing *Mabry* v. *Baxter*, 11 Heisk. (Tenn.) 689, 691, and *Sanders* v. *Cabanniss*, 43 Ala. 173, in condemnation of such a procedure as an illegal assumption by the legislature of judicial power.

Although two dissenting opinions were filed in the *Berger* case, written by Justices Day and McReynolds, neither of them suggests that the construction of the statute given by the majority of the court involves any unconstitutional interference with the judicial power vested in the courts.

E. R. S.

ACCIDENT IN WORKMEN'S COMPENSATION.—The interpretation of workmen's compensation statutes has caused the courts a great deal of difficulty. The usual statute provides for compensation for an "accident arising out of and in the course of the employment." Such a type of statute has made it necessary for the courts to inquire into what constitutes an accident, what is an accident arising out of the employment, and what is an accident arising in the course of the employment. Each one of these inquiries has been the source of much litigation, and it has now become fairly well settled as to what accident "arises out of and in the course of the employment." See 12 MICH. L. REV. 614, 688; 14 MICH. L. REV. 525; 15 MICH. L. REV. 92, 606; 16 MICH. L. REV. 179, 462; 18 MICH. L. REV. 72, 162. The question as to what constitutes an accident is still the subject of many varied decisions. The problem was involved in the recent case of *Prouse* v. *Industrial Commission* (Colo., 1920), 194 Pac. 625, where the court (two judges dissenting) held that a coal miner was not injured by accident where a germ disease had proved fatal because he had become weakened by foul air and dioxide gas which came from an inclosed entry that the miners had broken into.

One of the principal reasons for the variety of decisions in regard to the word "accident" is that the word is used in many different senses, and